SUPREME COURT, U. S.

Supreme Ct.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 70-90
(Formerly No. 1412)

JOHN SCHILB, et al.,

Plaintiffs-Appellants,

vs.

VINCENT P. KUEBEL, as Clerk of the Circuit Court of St. Clair County, et al.,

Defendants-Appellees.

Appeal from the Supreme Court of the State of Illinois

REPLY BRIEF

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Keenan Printing Company 888

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Article 110 of the Illinois Criminal Code (Ill. Rev. Stat. 1963, etc., Ch. 38, Par. 110-1 *et seq.*) provides for the pretrial release of an accused:

1. On his individual recognizance (Sec. 110-2);
2. On the deposit of 10% of the full amount of bail (Sec. 110-7);

3. On the deposit of cash, stocks or bonds in the full amount of bail, or pledging real estate in double the amount of bail (Sec. 110-8).

Article 110 imposes a bail cost (Sec. 110-7 (f)) upon those released under Section 110-7, but imposes no like cost upon those released under either Sections 110-2 or 110-8.

This is a class action, commenced on behalf of John Schilb and all others similarly situated, who paid a bail cost pursuant to Section 110-7 (f). (Complaint, A. 4-12); (Answer, A. 13-15); (Stipulation, A. 17-22); and, (Opinion, A. 30-31)].

It is respectfully submitted that plaintiffs have established in their principal brief that the cost retention provision of Section 110-7 (f) contravenes and violates the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States, for:

1. The imposition of the bail cost on only one segment of the class gaining pretrial release creates an "invidious discrimination" by imposing a burden on this segment while imposing no similar burden on others gaining pretrial release. *Rinaldi* v. *Yeager*, 384 U.S. 305 (1966);
2. The imposition of the entire burden of supporting the Illinois Bail System on those persons gaining pretrial release who are least able to afford it—the poor and non-affluent (*Bandy* v. *U.S.*, 81 S. Ct. 197 (1966)—penalizes that segment in a quest for justice due to their lack of wealth, *Griffin* v. *Illinois*, 351 U.S. 12 (1956); and,
3. The imposition of bail costs upon the innocent violates the most rudimentary concept of Due Process (*Giaccio* v. *Pennsylvania*, 382 U.S. 399 (1966).

These are the three issues presented.

The defendants have failed to meet these issues; rather they have attempted to create the impression that plaintiffs seek to attack and destroy the entire bail system in Illinois and resurrect the evils of the bondsmen. Nothing could be further from the fact. The plaintiffs from the inception of this action have consistently supported this "progressive legislation". *They do not challenge the 10% deposit—they challenge the retention of 10% of that deposit.*

Defendants have attempted to justify the imposition of bail costs on John Schilb, and all others similarly situate, by circumventing the issues. *Rinaldi* v. *Yeager,* 384 U.S. 305 (1966), may not be distinguished by a dissertation on the evils of the professional bail bondsman. *Griffin* v. *Illinois,* 351 U.S. 12 (1956), cannot be ignored by a discussion of the differences between the "moderately poor" and the indigent, and similarly, the force and logic of *Giaccio* v. *Pennsylvania,* 382 U.S. 399 (1966), is not dissipated by the bald assertion that the 10% retention amount is an "administrative charge" and not a court cost attendant to a criminal prosecution.

CONCLUSION

WHEREFORE the plaintiffs respectfully pray that the decision of the Supreme Court of the State of Illinois be reversed.

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